

## How to Handle the First Meeting With a Client

**E**state-planning attorneys handle their initial meetings with clients in different ways. Various factors come into play, including how much information to ask for before the meeting, how much preparation to do and which individuals

should be present at the meeting in addition to the client and the attorney. We asked Avi Z. Kestenbaum and Marvin E. Blum, two of our editorial advisory board members on the Modern Practice Committee, to share their views on this important interaction. Here are their responses.



A Blind Date

By **Avi Z. Kestenbaum**

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**think of the** first client meeting as a blind date, where someone may have recommended that the two parties meet, and perhaps the two parties spoke on the phone or exchanged emails and text messages before the meeting. There's some nervousness and apprehension going in and uncertainty that it will go well.

"You never get a second chance to make a first impression." This hackneyed expression is also very true in this context. The client will typically need to decide quickly after the first meeting whether they want to hire the attorney or, at the very least, request a second meeting and send confidential information. Sending a legal engagement agreement and initiating the billing process will typically begin immediately following the first meeting, even if it starts out in a more limited scope. In many ways, the success of the attorney-client relationship is predicated on the client's gut feelings and opinions of the attorney as the right fit for them from the first meeting. Though, in reality, the clients' feelings and judgments concerning the attorney and their law firm truly begin from the moment the client first contacts the firm and speaks or emails with the attorney or their executive assistant, if not sooner. This "sooner"

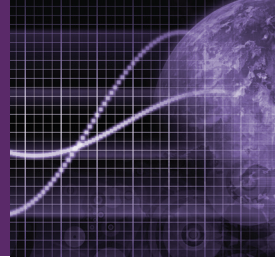
includes the client's reactions to the firm's website and to other of the firm's public materials, as well as to information the client has received from the person who's referred them to the attorney.

Here's my view on some of the issues involved in the first client meeting:

**Financial information and documents.** Should you ask the client to provide financial information and documents in advance of the first meeting, if so, what should you ask for?

It's my practice not to request too much financial or personal information in advance of the first meeting. I want the client to feel comfortable with me and have some basic level of trust before I seek confidential information. Additionally, if the client hasn't hired my firm yet and isn't even sure they will hire my firm, the client may find it very cumbersome and time consuming to send documents, tax returns and other potentially voluminous information in advance of the first meeting.

Some clients may want to send me substantial information in advance of the first meeting. I don't decline the information, but I'll politely tell them that I can't spend too much time reviewing information and documents before knowing whether the client is actually going to hire my firm. It's important for attorneys to make sure that their valuable time isn't wasted, which can easily happen if they aren't careful about towing the line with new client prospects. However, each client situation is unique, and perhaps for a terrific new prospect, I'll consider spending more time reviewing information and documents in advance of the meeting, even knowing my time might not be compensated for if the prospect



doesn't hire my firm. Additionally, certain clients will agree to hire my firm on the more limited engagement of a few hours to start, which allows me enough time to review the information and provide recommendations. After the few hours of allotted time and my recommendations, the client will decide whether to hire my firm for the complete estate-planning project. This way, I can be comfortable that I'm not wasting my time, and the client has additional time to decide if I'm the right fit.

**Billing.** My general practice is not to bill for the first meeting. However, if the client hires my firm, we'll include the time spent on the first meeting in the billing. If the client doesn't hire my firm, then the first meeting isn't billed. I don't feel comfortable billing a client for a first meeting if the client doesn't end up hiring my firm. Therefore, it's very important immediately after the first meeting to send the client an engagement agreement and not get caught spending too much time and effort trying to land the representation and never being hired. This is also the reason why I typically limit the time that I spend preparing for and attending the first meeting. There should be enough time spent in advance of the first meeting and at the meeting so the attorney and client can decide whether each is a right fit for the other. After all, whether they engage in hourly services or flat fees, attorneys sell their time in one form or another. Usually, I don't spend much more than one hour at a first meeting, though sometimes I will spend more time if I feel the client is very likely to hire my firm or if a significant relationship is probable. Similar to any investment, I try to apply a cost-benefit approach.

I'm aware that many attorneys charge a consultation fee for the first meeting, which is completely understandable. The decision on whether to charge this fee may also depend on the "closing" rate of the attorney (that is, whether the attorney is usually hired after the first meeting). If the attorney is usually hired, they may not feel the need to bill for the first meeting because the fees will be ultimately covered after they're hired. However, if the attorney's time for the initial meeting often goes uncompensated because the attorney doesn't have a high closing rate or perhaps the attorney practices in a specific area in the trusts and estates field, in which consultations don't usually lead to being hired, then the attorney

may feel a greater need to bill for the first meeting even if they aren't hired for the representation.

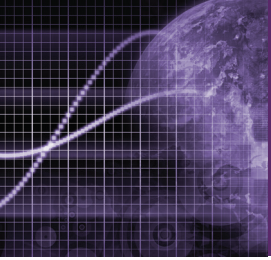
If the client still hasn't decided on whether they want to hire my firm after the initial call, the exchange of emails and the first meeting, often I suggest that we start with a more limited engagement agreement. We agree that my firm can bill for approximately five to 10 hours of time, depending on the circumstances, for attending the first meeting, reviewing the information, analyzing approaches and preparing preliminary recommendations. After receiving the recommendations, the client can decide whether to hire my firm for the full engagement. This way, the client doesn't feel that they need to make the immediate decision to hire my firm and is able to make a more informed decision after receiving more specific recommendations and getting to know us better. Similarly, my firm gets paid for the time spent working on the matter without concern that it won't be hired and our time wasted.

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Whether to allow others to attend the initial meeting is a difficult question from a legal and business perspective.

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**Who attends?** It may be necessary for other individuals, aside from the client and the attorney, to attend this initial meeting. For example, a client may want to bring their spouse, or an elderly client may want to bring their adult child. The attorney may want to include their associate or paralegal. Whether to allow others to attend the meeting is a difficult question from a legal and business perspective. From a legal perspective, if a parent meets with the attorney together with the adult child, and if that child under the subsequently drafted estate-planning documents receives more than their siblings or is named in a greater fiduciary capacity, questions of undue influence abound. In some jurisdictions, it may even create a presumption of undue influence. Therefore, the attorney must explain this issue before



the meeting and, if possible, meet with the parent alone and not have communications with the child during the parent's estate-planning process.

While it would generally be more prudent not to have the child attend the first meeting or be involved in the parent's estate planning, it may be impossible in certain circumstances, such as with an elderly or frail parent or if the parent relies heavily on the child. However, even in these situations, I recommend the child not attend the meeting, if at all possible. If the parent still insists that the child attend, or it's necessary for other reasons, I advise the parent and child of future issues that could arise regarding claims of undue influence. There are, of course, a number of ways to significantly mitigate both the likelihood and the success of a future claim of undue influence even if it's necessary that the child attend the first meeting, but that's beyond the scope of this article.

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The attorney needs to decide very quickly, preferably even before the first meeting, whether they should represent only one spouse and not the other.

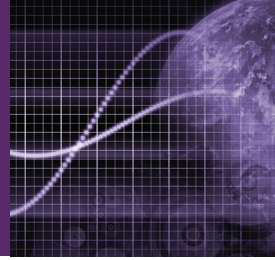
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Additionally, representing and meeting with both spouses isn't always simple from a legal or practical perspective. If there are conflicts of interest or serious disagreements between the spouses, the attorney should likely not represent both spouses unless the attorney feels that they can be impartial and provide proper advice to both spouses under the professional rules of conduct. Even if legally permissible, it may not be advisable if it might create friction and future issues between the spouses or accusations against the attorney for not being an impartial and zealous advocate for both spouses. Each situation representing both spouses is unique, and this type of representation could be a future article in its own right due to the number of complex issues involved and the traps for the unwary.

If possible, the attorney needs to decide very quickly, preferably even before the first meeting, whether they should represent only one spouse and not the other. If so, the meeting should only be with the spouse the attorney is representing. However, often the attorney can't make this determination until after the first meeting, which makes it ever more complicated for the attorney to tell the couple that the attorney can only represent one of them. The attorney may already be prejudiced and not able to represent one spouse without a waiver from the other spouse after the other spouse confided in them. As a matter of best practice, if the attorney already met with both spouses, even if the attorney wasn't hired, the attorney should likely receive both of their written permissions to later represent only one of them.

Deciding whether to include the client's other advisors and the attorney's associate or paralegal in the first meeting is also heavily dependent on the facts and circumstances. First and foremost, the client's wishes are paramount. So, if the client wants other advisors present, such as their accountant and financial or insurance advisors, they should absolutely attend the first meeting. Their presence may be very helpful to the planning and process. I think it also depends on the size and complexity of the client's assets, businesses and overall financial picture. The more complicated and involved, the greater the necessity for the other advisors to be present from the beginning. Furthermore, one of the other advisors may have referred the client to the attorney, and the client may have chosen that advisor to be the quarterback from the start.

The attorney should consider whether it will be helpful to have other advisors at this "interview," especially because it will likely become less personal and intimate with more advisors present, and it may prevent the client and the attorney from being completely open with each other. From a legal perspective, having others present will also limit attorney/client privilege and confidentiality. It certainly might be helpful to have other advisors present to gauge how the advisor group will work as a team and how the personalities mesh. Also, it will be valuable for the client to have the advice of a trusted and experienced advisor about whether the attorney is the right fit. So, there's no right or wrong answer,



and it all depends on the facts and circumstances, and most importantly, the client's wishes.

Similarly, deciding to have an associate or paralegal at the first meeting is a question of facts and circumstances, and there are advantages and disadvantages to both options. The benefits include having another knowledgeable and helpful legal professional available to the client, especially if the lead attorney has a hectic practice and the client wants immediate attention. Also, an associate might be helping the attorney with the planning and drafting, so it's better that the associate be involved from the outset so nothing is lost in translation. This might also end up saving time and legal fees especially if the associate bills at a lower rate. The disadvantages include the potential impairment of candor and intimacy between the client and the attorney, going back to the blind date analogy.

**How to conduct meeting.** Should the first meeting be in person, via Zoom or by phone? Is a brief preliminary call in advance warranted? As with a first date, it's usually preferable to meet in person to establish trust and warm feelings about each other and get the relationship off to a good start. (Though maybe the younger generations also prefer to date through technology!) There's nothing like a face-to-face meeting and to be able to look directly into someone's eyes, the windows to their soul, to help establish trust and form opinions even in this age of Zoom and WhatsApp. Also, if the attorney is one of several being interviewed, they might have a better chance of being hired with a more personal approach.

However, it's understood that both the prospective client and attorney may sometimes require the first meeting be virtual due to tight schedules and distances. It's simply more convenient and saves time to meet virtually. It also allows connectivity in different time zones and countries and expands the representation opportunities. Therefore, there are many advantages to having the first meeting virtually even if it isn't the preferred approach.

There's usually a preliminary call before the first meeting, though it's possible that the initial contact could be through email. Often, the preliminary call is with the attorney's executive assistant, who gathers the information and answers questions regarding billing procedures and processes involved and

provides general firm and attorney information. In other situations, there's a referral source such as an accountant, financial or insurance professional or another client who recommends the attorney. Perhaps meeting in person is a little less important if there's a trusted referral source because both the attorney and client may already have a basic level of confidence in each other due to the reliable origination source. If the meeting isn't held in person, I highly recommend using Zoom or similar technology because being able to see each other's faces and expressions will help facilitate confidence and trust and allow for clearer judgments to be made and opinions to be formed than with a faceless phone call.



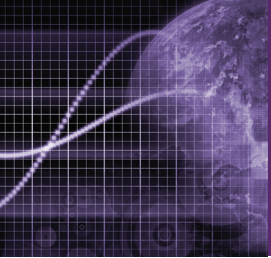
A Client-Specific Process

By **Marvin E. Blum**

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**I'm now more** than 45 years into my law career and have conducted thousands of first meetings with clients. When I was asked to write this article, I thought it would be easy. Surely by now I have a standard approach I follow every time. However, I came to the realization that although certain aspects of the first appointment are fairly standardized, there's no "cookie cutter" approach. I discovered the process is more client-specific than I realized, and the planning for those specifics starts with the first contact with a client prospect.

**The first call.** Typically, a new client first makes contact with me by either emailing me or calling my office. Either way, I respond by connecting them with my assistant, Cat Bardin, to gather preliminary information. Over the last decade, Cat has become extremely adept at gathering information to help us assess if the inquirer is a potential fit and how to best approach the first visit. So, I asked Cat for her input and from the response she gave me, I learned why she's so good at welcoming client prospects and vetting them to help us properly plan for the first appointment.



Cat first applies her people skills and intuition to adapt to the client's way of communicating. Some are sophisticated, some aren't. Some are forthcoming, some hold back. Cat tries to match their pace, but regardless of their style, she always approaches the call in a warm and friendly manner and doesn't rush. She makes the client feel at ease so they're more responsive to her. She then finds out how they heard about us so we can send a thank you. She finds out the spelling of their names, contact information, marital status and if they have children. Cat gathers enough information to identify any possible conflicts of interest before we proceed further. She carefully tries to get a feel for the size of the estate

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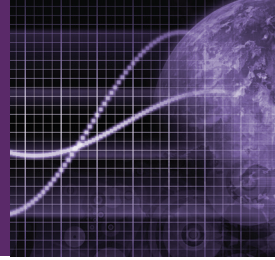
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and complexity of the issues so we can staff the work appropriately, but she never bluntly asks their net worth. Although we don't require a minimum net worth for our clients, we're not a good fit for everyone, and we try to establish that the new prospect will be satisfied that the benefit they receive will be worth the cost. It takes some finesse, but potential clients usually reveal to her enough information to guide us, particularly enough to know if the estate exceeds the exemption level and will involve sophisticated tax planning. She also asks if they own real property, oil and gas assets, any entities or any foreign assets. If the caller is seeking asset protection planning, Cat ferrets out if there's a pending claim against them or a lawsuit that's already been filed. Cat's notes become a valuable resource for me before I attend that first meeting.

**Billing for the first meeting.** It's common for

prospects to ask early on about the cost of an initial consultation. In most cases, our policy is to have a visit of one hour or less to establish if there's a fit and good chemistry. We tell the client in advance that if the first meeting doesn't result in their engaging us, we won't bill them. However, there are exceptions to this policy. If the client wants a more involved initial contact that requires more time and/or more preparation, we're candid that we can't provide that for no cost. If the case involves controversy, and they're shopping for litigation advice, we require an initial consultation fee. Because we generally adhere to our standard policy of not billing unless we're engaged, we manage expectations that the first meeting will be a more preliminary "get-to-know-each-other" and not a deep dive. Fortunately, our pre-meeting vetting process is so effective that the vast majority of prospects convert into paying clients, so we rarely lose the revenue from time spent in an initial consultation.

**Receiving financial information and documentation prior to the first meeting.** Because our standard practice is to wait until after the first meeting to send an engagement letter, we resist reviewing substantial documentation prior to that meeting. If a prospective client sends a document download before we meet, they'll expect that we'll have studied it. However, mastering a review of a client's existing plan is a time-consuming process and best occurs after we're engaged. On the other hand, it's common for us to receive our standard estate-planning questionnaire, filled out either fully or partially, either prior to or at the first meeting. We don't require it, but if it's filled out, the meeting is more efficient. Reviewing that questionnaire is a much quicker process than reviewing detailed financial information and documents. When a client chooses to send us more detailed information before the first visit, we accept it with the understanding that we won't give it a detailed review until after we're engaged. As mentioned above, if the client wants us to review that information thoroughly, we generally need to veer from our policy and charge an initial consultation fee. Furthermore, if they wait until after the first meeting to gather information, we can compose a better list of items needed, and the client's efforts to assemble that data will be more productive.



### In Person, Zoom or Phone?

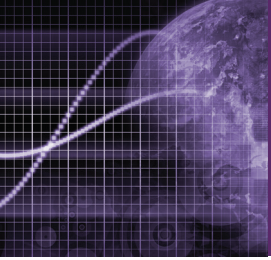
Prior to the pandemic, the answer to this question was almost always that the first meeting was in person. It was never by Zoom, as we barely knew how to do virtual meetings efficiently. However, in this new post-COVID environment, we're living in a Zoom world. As much as I prefer having face-to-face interaction to connect visually and read body language, the reality is that Zoom life is here to stay. There are obvious efficiencies. Clients enjoy saving the travel time to come to our office, especially if there's a long distance involved. It certainly creates the opportunity for us to represent individuals who are located further away. In a state as large as Texas, it truly opens the door for us to easily take on clients from the Rio Grande Valley to the Panhandle, and from El Paso to the Texas side of Shreveport, La. Though initially awkward, we've grown accustomed to "Brady Bunch" style computer screens with multiple representatives from the client's family and advisory team. We leave the decision to the client as to their preference, but lately more are opting for Zoom over in person. The communication method that's selected the least is a phone meeting, as with electronic meetings, we can at least see each other's faces, especially if we've never before met. Even though in-person meetings are still the best way to get to know each other, I have to say we've gotten really good at playing "Hollywood Squares" with our clients.

**Who attends?** Most of our engagements involve representing a married couple. In that situation, we prefer for both spouses to participate in the first meeting. We don't insist on it, as sometimes only one spouse is doing the legwork to identify legal counsel for the couple. However, at that initial conference, we urge the solo spouse to include the other spouse in all future meetings, and they almost always comply. When a child brings an elderly parent to a meeting, we're sensitive to potential claims of undue influence that could arise later. The same is true whenever any individual (other than a client's advisor) accompanies a client to a meeting. In those cases, if the client wants them to be present for the client's own comfort level, we generally include the third party at the start of the meeting, but as it progresses, we ask the third party to exit

so we can confirm the client's wishes without any third party presence or influence.

When a client has members of an advisory team that they want to include in the initial meeting, we welcome them to participate. We find it not only comforting to the client but also helpful in the fact-gathering, decision-making and implementation phases of the project. The most typical advisor to join us in the first meeting is the client's CPA. We also have frequent participation by family office executives, insurance professionals and wealth managers. Our firm is very collaborative, and we find the client is best served when all the key members of their advisory team openly communicate with each other. Having all at the same table helps keep everyone on the same page. The decision whether to include other advisors at the first conference is the client's choice. As meetings progress, we're careful to identify situations requiring confidentiality, and for those discussions, we limit the participants to just the clients and the lawyers.

From the lawyer's standpoint, the biggest decision about who's in the room for the first meeting is who attends it from the law firm side. As my practice grew, I discovered that the best way for me to represent clients was to always include someone else on my team in the representation. There are multiple reasons. First is that I welcome the benefits of brainstorming with a colleague. I've often found that in bouncing ideas off each other, we come up with solutions that neither of us could have found if working solo. I also always want two sets of eyes on all the work we do, as it's easy to miss something if you're reviewing your own work. Furthermore, by dividing and conquering, we can provide a quicker turnaround time and avoid the work getting backlogged on my desk. Finally, including others with lower billing rates provides clients with cost savings. We're completely upfront with clients about these reasons and explain to clients on the first call with them that this is how we work. By being candid with clients, we don't experience pushback from them when we tell them that another professional from our team will attend the first meeting with me. I much prefer this over meeting with the client alone and creating the false impression that I'll be doing all the legwork on the file.



I understand that some clients may feel more comfortable opening up if I attend the meeting alone. If we sense that, or if they so insist, we'll accommodate them. However, as soon as possible, we try to wean them over to having direct contact with other members of our firm during the work phase of the engagement.

One of the hardest questions that almost always arises in the first meeting, or even in the first call, is to look into a crystal ball and give a fee quote.

The most common makeup of the team from our side is a senior lawyer and a junior lawyer. At other times, it may be a lawyer and a paralegal. I lean away from having more than two professionals from our firm in the first meeting as I don't want to intimidate or arouse fears of over-lawyering. If I attend the first meeting alone, I then have to meet with the other lawyer to bring them up to speed, requiring more time and risking something being lost in translation. When I attend a meeting along with a junior lawyer, the reality is that I do the bulk of the talking from our firm. I always ask the other lawyer to introduce themselves and tell their background. Even if their input is minimal, when the client meets the other lawyer at the first meeting, they're more inclined to communicate with that individual directly as the work progresses, which makes the process more efficient. Finally, having junior lawyers in the initial meeting is a great training ground to teach them how to interact with clients, explain the work process and describe potential planning tools. By listening and observing the senior lawyer's bedside manner, they'll be prepared for the day they're the senior lawyers in the meeting.

**How much will this work cost?** One of the hardest questions that almost always arises in the

first meeting, or even in the first call, is to look into a crystal ball and give a fee quote. I often compare this to answering how much a car will cost without knowing whether you're buying a Toyota or a Cadillac. Cat is especially wary when someone describes their estate needs as "simple" or says, "I just have one easy question I need answered." We all recognize that nothing in estate planning is ever as simple as a client may perceive. For these reasons, we hesitate to offer any hard-and-fast fee quotes during the initial call or meeting. We generally reveal our hourly rates and answer that we'll get back to them with a fee projection after we assess their needs. We can't do that until we know more about their situation, so the fee information usually follows with the engagement letter we send after the first meeting. I discovered that once you throw out a number, the client will never forget it and will try to hold you to it, even if you describe it as a rough estimate or just taking a wild stab at it. We explain that every engagement is unique, so fees will vary accordingly, but we'll communicate openly and regularly with them about fees. We explain that typically, the fee will be some combination of a fixed fee for part of the work, plus hourly for other tasks, with the hourly rates varying depending on experience level. We assure clients that we'll do our best to staff the work with those who are best qualified at the most efficient rates possible, with the work of junior members of the team supervised by more senior members. Unsurprisingly, even high-net-worth clients are often fee-sensitive, and we do our best to respond sensitively and manage their expectations.

### Bottom Line

In planning for and conducting the first meeting, we want to set the stage for a long-term relationship. More than anything, we want to convey that we're not just embarking on a transaction with a new client, but more importantly, we want to cultivate a relationship that will create a lasting connection between the client and our firm. 